



SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-73658; File No. SR-NYSEArca-2014-125)

November 20, 2014

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Reflecting a Change in The Investment Objective of the Treesdale Rising Rates ETF and Change in Its Creation and Redemption Procedures

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on November 10, 2014, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to reflect a change in the investment objective of the Treesdale Rising Rates ETF and changes in its creation and redemption procedures. The text of the proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved listing and trading on the Exchange of shares ("Shares") of the Treesdale Rising Rates ETF (the "Fund") under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares.⁴ Shares of the Fund have not commenced trading on the Exchange.

The Fund is a series of the AdvisorShares Trust ("Trust"), a statutory trust organized under the laws of the State of Delaware and registered with the Securities and Exchange Commission (the "Commission") as an open-end management investment company.⁵ The investment adviser to the Fund is AdvisorShares Investment, LLC ("Adviser"). Foreside Fund Services, LLC (the "Distributor") is the principal underwriter and distributor of the Fund's

⁴ See Securities Exchange Act Release No. 73082 (September 11, 2014), 79 FR 55845 (September 17, 2014) (SR-NYSEArca-2014-71) (order approving listing and trading on the Exchange of the Treesdale Rising Rates ETF under NYSE Arca Equities Rule 8.600) ("Prior Order"). See also Securities Exchange Act Release No. 72679 (July 28, 2014), 79 FR 44878 (August 1, 2014) (SR-NYSEArca-2014-71) ("Prior Notice," and together with the Prior Order, the "Prior Release").

⁵ The Trust is registered under the 1940 Act. On September 4, 2013, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) and under the 1940 Act relating to the Fund (File Nos. 333-157876 and 811-22110) and on September 29, 2014, the Trust filed with the Commission definitive materials on Form 497 (File No. 333-157876) ("Registration Statement"). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 29291 (May 28, 2010) (File No. 812-13677) ("Exemptive Order").

Shares. The Bank of New York Mellon (the “Administrator”) serves as the administrator, custodian, transfer agent and fund accounting agent for the Fund.

In this proposed rule change, the Exchange proposes to reflect a change in the investment objective of the Fund and changes in its creation and redemption procedures, as described below.⁶

Investment Objective

The Prior Release stated that the Fund would seek to generate current income while providing protection for investors against loss of principal in a rising interest rate environment. The Adviser wishes to revise the description to state that the Fund will seek total return while providing protection for investors against loss of principal in a rising interest rate environment.

Creation and Redemption of Shares

As stated in the Prior Release, the Fund will issue and redeem Shares on a continuous basis at net asset value (“NAV”) in aggregated lots which shall initially be of 25,000 Shares (each, a “Creation Unit”).

As stated in the Prior Release, all orders to create or redeem Creation Units must be received by the Distributor no later than 3:00 p.m., Eastern Time in order for the creation or redemption of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date.

The Prior Release stated that the consideration for purchase of a Creation Unit generally would consist of an in-kind deposit of a designated portfolio of securities – the “Deposit

⁶ The changes described herein have been filed with the Commission in definitive materials on Form 497. See note 5, supra. The Adviser represents that it will manage the Fund in the manner described in the Prior Release, and will not implement the changes described herein until the instant proposed rule change is operative. Shares of the Fund have not commenced trading on the Exchange.

Securities” – per each Creation Unit constituting a substantial replication, or a representation, of the securities included in the Fund’s portfolio and an amount of cash – the “Cash Component.” Together, the Deposit Securities and the Cash Component would constitute the “Fund Deposit,” which would represent the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The Prior Release stated that the Cash Component would be an amount equal to the difference between the NAV of the Shares of the Fund (per Creation Unit) and the market value of the Deposit Securities. The Prior Release also stated that the Trust reserved the right to permit or require the substitution of an amount of cash – i.e., a “cash in lieu” amount – to be added to the Cash Component to replace any Deposit Security which may not be available in sufficient quantity for delivery or which may not be eligible for transfer through the clearing process, or which may not be eligible for trading by an authorized participant or the investor for which it is acting. Finally, the Prior Release stated that the Trust reserves the right to offer an “all cash” option for creations and redemptions of Creation Units for the Fund.⁷

The Advisor wishes to revise the description of the consideration for purchase of a Creation Unit to state that Creation Units of the Fund generally will be sold for cash (“Cash Purchase Amount”). The Advisor wishes to revise the description to state that Creation Units will be sold at the NAV next computed, plus a transaction fee, and all purchases of the Fund will be effected through a transfer of cash directly through the Depository Trust Company (“DTC”). The Advisor further wishes to revise the description to state that the Trust reserves the right to offer an in-kind option for creations of Creation Units for the Fund⁸ and that the Trust reserves the absolute right to reject a creation order if (a) the order is not in proper form; (b) the

⁷ The Adviser represents that, to the extent the Trust effects the creation of Shares in cash, such transactions will be effected in the same manner for all authorized participants.

⁸ The Adviser represents that, to the extent the Trust effects the creation of Shares in kind, such transactions will be effected in the same manner for all authorized participants.

investor(s), upon obtaining the shares ordered, would own 80% or more of the currently outstanding shares of the Fund; (c) acceptance of the Cash Purchase Amount would, in the opinion of counsel, be unlawful; or (d) in the event that circumstances outside the control of the Trust, the Distributor and the Advisor make it for all practical purposes impossible to process creation orders.

As stated in the Prior Release, Shares generally may be redeemed in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Administrator and only on a business day. The Trust will not redeem Shares of the Fund in amounts less than Creation Units.

The Prior Release stated that unless cash redemptions are available or specified, the redemption proceeds for a Creation Unit generally would consist of “the Fund Securities” – as announced by the Administrator on the business day of the request for redemption received in proper form – plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities, less a redemption transaction fee. The Prior Release stated that the Administrator, through the National Securities Clearing Corporation (“NSCC”), would make available immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time) on each business day, the Fund Securities that will be applicable to redemption requests received in proper form on that day as well as the estimated Cash Component.

The Prior Release stated that if it is not possible to effect deliveries of the Fund Securities, for example if the investor is not able to accept delivery, the Trust could in its discretion exercise its option to redeem Shares of the Fund in cash, and the redeeming beneficial owner would be required to receive its redemption proceeds in cash. In addition, the Prior

Release stated that an investor could request a redemption in cash which the Fund could, in its sole discretion, permit.⁹ The Prior Release stated that in either case, the investor would receive a cash payment equal to the NAV of its Shares based on the NAV of Shares of the Fund next determined after the redemption request is received in proper form (minus a redemption transaction fee and additional charge for requested cash redemptions, as described in the Registration Statement). The Prior Release stated the Fund could also, in its sole discretion, upon request of a shareholder, provide such redeemer a portfolio of securities which differs from the exact composition of the applicable Fund Securities but does not differ in NAV.

The Prior Release stated that the Fund (whether or not it otherwise permits cash redemptions) reserves the right to redeem Creation Units for cash to the extent that the Fund could not lawfully deliver specific Fund Securities upon redemptions or could not do so without first registering the Fund Securities under such laws. The Prior Release stated that an authorized participant or an investor for which it is acting subject to a legal restriction with respect to a particular stock included in the Fund Securities applicable to the redemption of a Creation Unit may be paid an equivalent amount of cash.

The Advisor wishes to revise the description of redemption to state that redemption proceeds for a Creation Unit of the Fund generally will consist of cash in an amount equal to the NAV of the shares being redeemed, as next determined after receipt of a request in proper form, less a redemption transaction fee. The Trust reserves the right to offer an in-kind option for redemptions of Creation Units for the Fund.¹⁰

⁹ The Adviser represents that, to the extent the Trust effects the redemption of Shares in cash, such transactions will be effected in the same manner for all authorized participants.

¹⁰ The Adviser represents that, to the extent the Trust effects the redemption of Shares in kind, such transactions will be effected in the same manner for all authorized participants.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

Except for the changes noted above, all other facts presented and representations made in the Prior Release remain unchanged.

All terms referenced but not defined herein are defined in the Prior Release.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)¹¹ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, and is designed to promote just and equitable principles of trade and to protect investors and the public interest, in that the change in the statement of investment objective will specify that the Fund will seek to generate total return while providing protection for investors against loss of principal in a rising interest rate environment, thereby providing notice to investors regarding the change in the investment objective of the Fund before Shares of the Fund commence trading on the Exchange. The Adviser believes such change will enable investors to better understand the Fund's expected investment activities and determine if and/or to what extent an investment in the Fund is appropriate for their portfolios. The Adviser represents that there are no changes to the Fund's statements regarding how at least 80% of its net assets will be invested in normal circumstances, how it may invest remaining assets, how it

¹¹ 15 U.S.C. 78f(b)(5).

will calculate NAV, or what information will be publicly available regarding the Shares and the portfolio holdings of the Fund.

The Exchange also believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, and is designed to promote just and equitable principles of trade and to protect investors and the public interest, in that the proposed rule change would provide notice to investors of the proposed changes in the creation and redemption procedures of the Fund, including notice that Creation Units of the Fund generally will be sold for the Cash Purchase Amount, that Creation Units will be sold at the NAV next computed, plus a transaction fee, and purchases of the Fund generally will be effected through a transfer of cash directly through the DTC. In addition, the proposed rule change would provide notice that the redemption proceeds for a Creation Unit of the Fund generally will consist of cash in an amount equal to the NAV of the shares being redeemed, as next determined after receipt of a request in proper form, less a redemption transaction fee. The proposed rule change would also provide notice that the Trust reserves the right to offer in-kind options for creations and redemptions of Creation Units for the Fund, and that to the extent such in-kind creations and/or redemptions are effected, such transactions will be effected in the same manner for all authorized participants.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing requirements in NYSE Arca Equities Rule 8.600. Except for the changes noted above, all other representations made in the Prior Release remain unchanged.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it is filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.¹⁴

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁵ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁶

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. In support of its request, the Exchange states that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest in that the proposed changes will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.¹⁷

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2014-125 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2014-125. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-NYSEArca-2014-125, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Kevin M. O'Neill,
Deputy Secretary.

8011-01p

[FR Doc. 2014-27976 Filed 11/25/2014 at 8:45 am; Publication Date: 11/26/2014]

¹⁸ 17 CFR 200.30-3(a)(12).